

REMARKS

Status of the Application

Claims 1-11, 13-16, and 28-31 are pending in the application. The Examiner has indicated that claims 1-11 and 13-16 are allowed under the condition that minor informalities are resolved. The Examiner has rejected claims 28-31 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,279,582 to Davison et al. ("Davison") and as allegedly being anticipated by International Application No. WO 1999/22790 to Elan Corporation, PLC ("Elan"). Claims 1, 2, 9, 10, 13, and 28 are currently amended. No new matter is being added by these amendments. The amendments to claims 1, 2, 9, 10, and 13 are being made to remedy the informalities cited by the Examiner as well as to clarify the claims.

Objections

The Examiner has indicated that claims 1-11 and 13-16 contain allowable subject matter but has objected to the claims as containing minor informalities. Applicants thank the Examiner for bringing these informalities to their attention and believe that all informalities have been remedied by the current amendments.

The Examiner objected to claim 1 as reciting two different "surfaces" (lines 2 and 14). Applicants have amended claim 1 at line 14 by adding the word "site" before surface, making the term consistent with that in line 2 and in the dependent claims. Applicants have also amended claim 1 by adding a hyphen between "needle" and "penetrating" in line 2 to correct this minor typographical error.

The Examiner objected to claim 2 as containing improper antecedent basis. Applicants have amended claim 2 to recite "the retracted position," making this term consistent with claim 1 and correcting any antecedent basis problem.

The Examiner objected to the term "movable" in claim 9. Pursuant to the Examiner's suggestion, Applicants have amended claim 9 by replacing "movable" with "movably."

The Examiner objected to claim 10 as being unclear with respect to which "unactuated position" it references. Applicants have amended claim 10 so that it now recites, "a spring that biases the actuator against the actuated position." There is no longer an unclear reference to "the unactuated" position.

The Examiner objected to claim 13 as also being unclear as to which “unactuated” position is being referenced. Applicants have amended claim 13 to refer to the “second unactuated position.” Applicants have also amended claim 13 by replacing “thereof” with “of the trigger member” in lines 2 and 4 to clarify which “portions” are being recited.

Applicants believe that the amendments to claims 1, 2, 9, 10, and 13 remedy all informalities in claims 1-11 and 13-16, thereby placing the claims in condition for allowance, and such action is earnestly sought.

Claim Rejections Under 35 U.S.C. § 102

A rejection under 35 U.S.C. § 102 is proper only if each and every element of the rejected claim is disclosed in a single prior art reference. MPEP § 2131. The Examiner has rejected claims 28-31 under 35 U.S.C. § 102(b) as allegedly being anticipated by Davison and Elan. Claim 28 is independent and claims 29-31 are dependent upon claim 28.

Independent claim 28 has been amended to recite that the base includes “at least a first opening and a second opening” and that the retraction mechanism is “responsive to contact with the site surface through the second opening, wherein when the base is placed next to a site surface and the needle is moved to the extended position the retraction mechanism locks the needle in the extended position until the base is released from next to the surface whereby the retraction mechanism automatically moves the needle from the extended position to the retracted position. These features are not disclosed or suggested by Davison or Elan. Neither Davison nor Elan disclose that the retraction mechanism locks the needle in the extended position until release of the base from the site surface. Rather, in both Davison and Elan, the needle is constantly biased to the retracted position. That is, an external force such as a user maintains the needle in the extended position; the retraction mechanism does not influence the needle to remain in the extended position. Further, neither the device of Davison nor Elan has at least first and second openings. In both Davison and Elan, the needle extends through a single opening in the sleeve and sheath, respectively. Accordingly, neither Davison nor Elan disclose the retraction mechanism of claim 28, and not all elements of claim 28 are found in the references. For at least these reasons, Applicants respectfully request that the Examiner withdraw the rejections of claim 28. Claims 29-31 depend from claim 28 and are allowable for at least the reasons discussed above, and Applicants respectfully request that the rejection be withdrawn.

Conclusion

In view of the current amendments and remarks, Applicants believe claims 1-11, 13-16, and 28-31 to be in condition for allowance, and such action is earnestly sought. Should the Examiner disagree, Applicants respectfully request that the Examiner contact the undersigned prior to the issuance of any official action.

Respectfully submitted,

Dated: October 2, 2008

By: /Christopher R. Kinkade/
Christopher R. Kinkade
Registration No. 59,378
FOX ROTHSCCHILD LLP
997 Lenox Drive, Building 3
Lawrenceville, NJ 08648
Telephone: (609) 844-3023
Facsimile: (609) 896-1469
Attorneys for Applicants